

Summary of SC94120, *Douglas Stewart v. Krikor O. Partamian, M.D., and Phoenix Urology of St. Joseph, Inc.*

Appeal from the Buchanan County circuit court, Judge Weldon C. Judah
Argued and submitted February 24, 2015; opinion issued July 21, 2015

Attorneys: Partamian and Phoenix Urology were represented by James E. Meadows of Polsinelli PC in Springfield, (417) 869-3353, Richard M. AuBuchon of the AuBuchon Law Firm LLC in Jefferson City, (573) 616-1845, and Timothy M. Aylward and Matthew T. Swift of Horn Aylward & Bandy LLC in Kansas City, (816) 421-0700. Stewart was represented by Paul L. Redfearn and Michael D. Wallis of The Redfearn Law Firm PC in Independence, (816) 421-5301; and Edward D. Robertson Jr. and Anthony L. DeWitt of Bartimus, Frickleton, Robertson & Goza PC in Jefferson City, (573) 659-4454.

This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.

Overview: Urologists appeal a circuit court’s judgment, following a jury trial, awarding a total of \$4.3 million in damages to a man who sued them for negligence in their treatment of his prostate abscess. In a unanimous decision written by Judge Richard B. Teitelman, the Supreme Court of Missouri affirms the judgment. The urologists failed to make a timely objection to the admission of another doctor’s videotaped testimony and so waived their argument that the trial court erred in admitting this testimony. They also failed to establish the verdict was excessive and, therefore, are not entitled to a new trial. And because they failed to establish the verdict was excessive, they suffered no legal injury from a statutory ban on a court procedure to reduce a jury’s damages award and, therefore, cannot challenge its constitutional validity.

Facts: Dr. Krikor Partamian diagnosed Douglas Stewart in May 2009 with a prostate abscess, caused by an inflammatory response to a bacterial infection, and placed Stewart on antibiotics. Four days later, a doctor with Phoenix Urology of St. Joseph Inc. examined Stewart and recommended draining the abscess. Neither Partamian nor Phoenix drained the abscess but continued antibiotic treatments. Two days later, Stewart’s abscess ruptured, requiring Partamian to perform surgery to permit drainage. But as a result of the rupture, Stewart sustained significant injuries. The infection spread, he was in a coma and on a ventilator for 28 days, and he ended up with urinary incontinence, impaired reproductive function and persistent, permanent pain. At the time, Stewart was 36 years old and engaged to be married. In June 2012, Stewart sued Partamian and Phoenix Urology, alleging their negligence caused his injuries. Following a trial, the jury returned a unanimous verdict in Stewart’s favor, awarding him a total of \$4.3 million in damages – about \$401,727 in past economic damages, \$1.5 million in past non-economic damages and more than \$3.98 million in future non-economic damages. Partamian and Phoenix appeal.

AFFIRMED.

Court en banc holds: (1) By failing to make a timely objection at trial to the admission of the videotaped testimony of the doctor who had recommended draining Stewart’s abscess, Partamian and Phoenix waived their argument that the circuit court erred in admitting this evidence at trial.

In fact, the record reflects Partamian and Phoenix's counsel telling the court, in reference to the possibility of showing the doctor's testimony the jury, that he had "no problem with that at all" and making no objection when the testimony was offered and admitted into evidence.

(2) Because Partamian and Phoenix have not established that the verdict was excessive, they are not entitled to a new trial. Stewart's hospital bills and lost wages support the jury's award of more than \$401,700 in past economic damages, and the evidence further supports the jury's award of \$1.5 million in past non-economic damages and nearly \$2.4 million in future non-economic damages. The evidence showed that 36-year-old Stewart has suffered permanent sexual and urological dysfunction and persistent pain as a result of his injuries and that his injuries have interfered with his physical relationship with his wife and negatively have impacted his personality and self-esteem. As such, the verdict was not excessive or disproportionate to the evidence of Stewart's injuries. The verdict also was not excessive as a result of any jury passion and prejudice. The jury's decision to award damages in a greater amount than that suggested by Stewart's closing argument does not establish that the verdict was excessive.

(3) Because Partamian and Phoenix failed to establish the necessary prerequisite to give the trial court the option of using remittitur (a procedure to reduce a jury's damages award) by failing to establish the verdict was excessive, they sustained no legal injury from the statutory ban on remittitur in medical malpractice cases. Consequently, this Court will not address the substance of their constitutional challenge to the validity of this statute.